

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NAOMI RUTH WATSON,)	
)	CASE NO. C14-0119-JLR-MAT
Plaintiff,)	
)	
v.)	REPORT AND RECOMMENDATION
)	RE: SOCIAL SECURITY DISABILITY
CAROLYN W. COLVIN, Acting)	APPEAL
Commissioner of Social Security,)	
)	
Defendant.)	
_____)	

Plaintiff Naomi Watson proceeds through counsel in her appeal of a final decision of the Commissioner of the Social Security Administration (Commissioner). The Commissioner denied plaintiff's applications for Disability Insurance Benefits (DIB) and Supplemental Security Income (SSI) after a hearing before an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, the Court recommends this matter be REMANDED for further proceedings.

FACTS AND PROCEDURAL HISTORY

Plaintiff was born on XXXX, 1952.¹ She has a high school education and two years of

¹ Plaintiff's date of birth is redacted back to the year of birth in accordance with Federal Rule of Civil Procedure 5.2(a) and the General Order of the Court regarding Public Access to Electronic Case

01 college. (AR 223.) She has past relevant work as an information specialist or technical
02 assistant/customer service representative. (AR 26.)

03 Plaintiff filed applications for DIB and SSI on January 18, 2011, alleging disability
04 beginning December 31, 2006. She is insured for DIB through December 31, 2011. (AR 15.)
05 Plaintiff's application was denied at the initial level and on reconsideration, and she timely
06 requested a hearing.

07 On June 20, 2012, ALJ Scott R. Morris held a hearing, taking testimony from plaintiff
08 and a vocational expert. (AR 35-75.) On August 28, 2012, the ALJ issued a decision finding
09 plaintiff not disabled before October 1, 2011, but becoming disabled on that date and
10 continuing to be disabled through the date of decision. (AR 15-28.)

11 Plaintiff timely appealed. The Appeals Council denied plaintiff's request for review
12 on November 22, 2013 (AR 1-3), making the ALJ's decision the final decision of the
13 Commissioner. Plaintiff appealed this final decision of the Commissioner to this Court.

14 **JURISDICTION**

15 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

16 **DISCUSSION**

17 The Commissioner follows a five-step sequential evaluation process for determining
18 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it
19 must be determined whether the claimant is gainfully employed. The ALJ found plaintiff had
20 not engaged in substantial gainful activity since the alleged onset date. At step two, it must be
21 determined whether a claimant suffers from a severe impairment. The ALJ found plaintiff's

22 Files, pursuant to the official policy on privacy adopted by the Judicial Conference of the United States.

01 cardiomyopathy severe prior to October 1, 2011, and plaintiff's cardiomyopathy and
02 depression severe after that date. Step three asks whether a claimant's impairments meet or
03 equal a listed impairment. The ALJ found that plaintiff's impairments did not meet or equal
04 the criteria of a listed impairment.

05 If a claimant's impairments do not meet or equal a listing, the Commissioner must
06 assess residual functional capacity (RFC) and determine at step four whether the claimant has
07 demonstrated an inability to perform past relevant work. The ALJ found that, prior to October
08 1, 2011, plaintiff had the RFC to perform less than the full range of sedentary work. Plaintiff
09 could not climb ladders, ropes, or scaffolds. She could occasionally climb ramps and stairs,
10 frequently balance, occasionally stoop and kneel, not crouch or crawl, occasionally reach
11 overhead bilaterally, and could have no more than occasional exposure to extreme cold,
12 extreme heat, industrial-strength fumes, odors, dust, gasses, or other pulmonary irritants and
13 hazards. Beginning on October 1, 2011, plaintiff had the additional restriction of performing
14 jobs that only involve simple, routine, repetitive tasks.

15 With that assessment, the ALJ found plaintiff able to perform her past relevant work as
16 an information specialist or technical assistant/customer service representative prior to October
17 1, 2011. After that date, the ALJ found plaintiff unable to perform her past relevant work.
18 Therefore, the ALJ found plaintiff disabled as of October 1, 2011 and through the date of
19 decision.

20 This Court's review of the ALJ's decision is limited to whether the decision is in
21 accordance with the law and the findings supported by substantial evidence in the record as a
22 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means

01 more than a scintilla, but less than a preponderance; it means such relevant evidence as a
02 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881
03 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which
04 supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278
05 F.3d 947, 954 (9th Cir. 2002).

06 Plaintiff argues the ALJ erred by failing to call a medical expert to establish the date of
07 onset of disability, failed to provide legally sufficient reasons for rejecting the opinion of Dr.
08 Demars, and failed to properly evaluate the credibility of her subjective symptom testimony.
09 She requests remand for an award of benefits or, alternatively, for further administrative
10 proceedings. The Commissioner argues the ALJ's decision is supported by substantial
11 evidence and should be affirmed.

12 Onset of Disability Date

13 Social Security Ruling (SSR) 83-20 discusses when an ALJ should call a medical expert
14 to assist in establishing a disability onset date. The Ninth Circuit has held that if the "medical
15 evidence is not definite concerning the onset date and medical inferences need to be made, SSR
16 83-20 *requires* the ALJ to call upon the services of a medical advisor and to obtain all evidence
17 which is available to make the determination." *DeLorme v. Sullivan*, 924 F.2d 841, 848 (9th
18 Cir. 1991) (emphasis added); *see also Armstrong v. Commissioner of Soc. Sec. Admin.*, 160
19 F.3d 587, 590 (9th Cir. 1998) ("where a record is ambiguous as to the onset date of disability,
20 the ALJ must call a medical expert to assist in determining the onset date"); *Morgan v. Sullivan*,
21 945 F.2d 1079, 1083 (9th Cir. 1991) (inferring a disability onset date "is not possible without
22 the assistance of a medical expert").

01 SSR 83-20 applies only if the ALJ makes a finding of disability, and a question is raised
02 as to whether the disability arose at an earlier time. *Sam v. Astrue*, 550 F.3d 808, 810 (9th Cir.
03 2008). This requirement is satisfied in the instant case. However, the SSR 83-20 requirement
04 of calling a medical expert is also limited to a situation in which the medical evidence is not
05 definite and the date of disability can only be established by inference. *Armstrong*, 160 F.3d
06 at 590. The parties are in disagreement as to this issue. The Commissioner argues the ALJ
07 had a legitimate medical basis for inferring the onset of plaintiff's depression, suggesting the
08 record showed normal psychiatric findings through September 30, 2011, and severe depression
09 thereafter. Therefore, the Commissioner argues, the ALJ reasonably presumed plaintiff's
10 depression became severe after September 30, 2011. (Dkt. 22 at 4.)

11 Plaintiff argues the onset date was ambiguous, noting she reported symptoms of
12 significant depression before October 1, 2011, the date designated by the ALJ as the onset of
13 disability. Plaintiff also points to the Global Assessment of Functioning score of 50 adopted
14 by the ALJ for the previous year, which would indicate the presence of serious impairment in
15 social and occupational function before the date designated by the ALJ (AR 26), as well as the
16 psychological evaluation by Dr. Edwards, reporting plaintiff's depression "'off and on' for the
17 rest of her life." (AR 441.)

18 The Court finds insufficient explanation in the decision for the basis of the disability
19 onset date identified by the ALJ. Although the Commissioner lists a number of entries in the
20 medical records that might support the ALJ's date of onset finding, these references were not
21 part of the reasoning of the ALJ. *See Pinto v. Massanari*, 249 F.3d 840, 847 (9th Cir. 2001)
22 ("[W]e cannot affirm the decision of an agency on a ground that the agency did not invoke in

01 making its decision.”) (citing *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947)).

02 Plaintiff testified she suffered from depression since before the date of onset designated
03 by the ALJ. (*See, e.g.*, AR 51, 53-54.) The record also establishes plaintiff became homeless
04 at the end of 2006. (AR 56.) While the ALJ cited the lack of a diagnosis of depression prior
05 to December 13, 2011, “it is common knowledge that depression is one of the most
06 underreported illnesses in the country because those afflicted often do not recognize that their
07 condition reflects a potentially serious mental illness.” *Nguyen v. Chater*, 100 F.3d 1462, 1465
08 (9th Cir. 1996) (citing Warren E. Leavy, *Hidden Depression*, Chi. Trib., Feb. 1, 1996 at 7).

09 On remand, the ALJ should more fully explain the basis for the finding that plaintiff did
10 not have a medically determinable mental impairment prior to the established onset date of
11 October 1, 2011. If the ALJ concludes it is unclear from the record when plaintiff’s depression
12 became disabling, the ALJ should call a medical expert to aid in determining onset date.

13 Dr. Demars

14 Plaintiff argues the ALJ failed to fully consider the opinions of treating physician
15 Sandra Demars, M.D. In particular, plaintiff notes the ALJ adopted a statement by Dr. Demars
16 on February 8, 2011 that plaintiff was cleared for “sedentary (e.g. office) work” (AR 318), but
17 did not reconcile apparently contradictory opinions of Dr. Demars set forth in a “Medical
18 Source Statement of Ability to do Work-Related Activities (Physical)” completed by the
19 doctor. (AR 449.) Plaintiff notes Dr. Demars found these more restrictive physical capacities
20 to have been present since 2006. (AR 453.)

21 The Commissioner contends plaintiff does not succeed in showing how Dr. Demars’
22 later opinion conflicts with the ALJ’s RFC assessment. However, the Court finds Dr. Demars’

01 opinion regarding plaintiff's capacity to stand and walk to be more restrictive than the
02 description of sedentary work set forth in the regulations. *See* 20 C.F.R. §§ 404.1567(a),
03 416.967(a). Dr. Demar's limitation of one hour of standing and thirty minutes of walking does
04 not satisfy the "occasional" (up to one-third of the time) walking and standing required for
05 sedentary work. Dictionary of Occupational Titles, 4th ed., Appx. C, 1991 WL 688702.

06 "The ALJ is responsible for resolving conflicts in the medical record." *Carmickle v.*
07 *Comm'r of SSA*, 533 F.3d 1155, 1164 (9th Cir. 2008) (citing *Benton v. Barnhart*, 331 F.3d
08 1030, 1040 (9th Cir. 2003)). *Accord Thomas*, 278 F.3d at 956-57 ("When there is conflicting
09 medical evidence, the Secretary must determine credibility and resolve the conflict.") (quoting
10 *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992)). On remand, the ALJ should more
11 fully consider and explain the weight given to the opinions of treating physician Dr. Demars.

12 Credibility

13 Plaintiff also assigns error to the ALJ's consideration of the credibility of her subjective
14 claims, arguing the reasons given were not clear and convincing. Credibility determinations
15 are inescapably linked to conclusions regarding medical evidence. *See generally* 20 C.F.R. §§
16 404.1529, 416.929. To the extent the ALJ's review and reconsideration of the date of onset
17 and the medical evidence impacts the credibility analysis, the ALJ should reconsider and
18 explain the weight given to plaintiff's statements concerning the intensity, persistence, and
19 limiting effects of her symptoms.

20 CONCLUSION

21 For the reasons set forth above, this matter should be REMANDED for further
22 proceedings.

01 DATED this 28th day of August, 2014.

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04 Mary Alice Theiler
05 Chief United States Magistrate Judge
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